

REMARKS

Claims 74-78, 82-84, 104-119, and 131-135 are pending in the present application, as Claims 1-73, 79-81, 85-103, and 120-130 have been withdrawn from consideration. Claims 74, 75, 82, 83, 104, and 114 have been amended without prejudice, Claims 115, and 133-135 have been cancelled without prejudice, and Claims 136-140 have been added, leaving Claims 74-78, 82-84, 104-114, 116-119, and 131, 132, and 136-140 for consideration upon entry of the present Amendment. Support for the changes to the claims, as well as for the newly added claims, is self-evident from the originally filed disclosure, including the original claims, and, therefore, no new matter is added. Reconsideration and allowance of the claims is respectfully requested in view of the above amendments and the following remarks.

Election/Restrictions

Applicant acknowledges the Examiner's maintenance of the properness of the election/restriction requirement with traverse. Applicant further acknowledges with traverse that the Examiner has withdrawn Claims 97, 90-95, 102, and 103 from consideration.

Claim Rejections Under 35 U.S.C. § 102(b)

Claims 74-78, 82-84, 104, 106-112, 114, 115, 117-119, and 133-135 stand rejected under 35 U.S.C. § 102(b) as allegedly unpatentable over U.S. Patent No. 6,098,313 to Skaja ("Skaja"). Applicant has cancelled Claims 115 and 133-135 without prejudice, thereby making the rejection for these claims moot, and Applicant respectfully traverses this rejection for the remaining claims.

Independent Claims 74, 82, and 104, from which the remaining rejected claims variously depend, all set forth that the first material layer includes a recessed area including a flat support portion supported by a recess sidewall, wherein the recess sidewall extends upwardly from a top surface. Therefore, the first material layer includes elements having various heights. That is, the top surface establishes the base level, the

recess sidewall extends from the base level and supports a flat support portion such that the flat support portion is at a higher level than is the top surface.

Additionally, the claims set forth that the second material layer is positioned on at least a portion of the flat support portion and on at least a portion of the recess sidewall. Accordingly, the second material layer covers those areas of the first material layer having differences in height.

To anticipate a claim under 35 U.S.C. § 102(b), a reference must disclose each and every element of the claim. *Lewmar Marine v. Varient, Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987). Therefore, in order to anticipate the claims, Skaja must, at the very least, teach or suggest that a single second material layer is positioned over elements having various heights and which are formed from a single first material layer.

Skaja teaches a sole component constructed by molding upper and lower sole component halves, which are joined to complete the sole component. Abstract. More particularly, Skaja teaches indentations located in an upper and a lower sole component. For example, Skaja teaches upper conal-shaped members 10 formed in an upper sole component half 40 and corresponding conal-shaped members 11 formed in the lower sole component half 41. Via a twin-sheet thermoforming process, where two separate molds are used to form the completed sole component, individual members 10 may be joined with individual members 11 at their points of contact, i.e., at the outermost top portions of the individual members 10 and 11. See Figure 11 and Column 12, line 59 – Column 13, line 8. Skaja further teaches pins 14 in the arch area of the upper sole component which extend into the sole interior towards and proximate to an indented platform 15 in lower sole component half 41, wherein pins 14 remain detached from platform 15. Column 8, lines 7-15. Skaja, therefore, teaches contacting a second material layer with a first material layer only at the topmost regions of those layers.

Skaja, then, differs from the claimed invention, in that Skaja does not teach the overlaying of a second material layer onto a first material layer such that the second material layer covers not only the topmost regions of a projection, but also the areas surrounding the topmost region of the projection, i.e., the recess sidewalls and/or the top

surface from which the recessed area extends, for example. Rather, Skaja only teaches joining those components that have points of contact when the two molds containing the two different material layers are combined. Such a teaching is necessary as Skaja teaches the formation of a sole component via a twin-sheet thermoforming process. One of the disadvantages of using a twin-sheet thermoforming process is the fact that the bonding of two layers of material to each other requires that the two layers of materials have a contact point after the layers have already been molded. Accordingly, those structures in the first mold that do not have a point of contact with a complementary component in the second mold, cannot be joined to a component in the second mold.

For example, referring to Figure 5 of Skaja, a bottom side of a single conal pin 10 cannot be permanently attached to anything other than a corresponding top side of a single conal pin 11 due to the spaces located between the various conal pins 11 utilizing the twin-sheet thermoforming process disclosed in Skaja. For this reason, then, Skaja cannot teach all of the elements contained in Applicant's claims

Therefore, As Skaja does not teach or suggest all of the elements set forth in the claims, Applicant, respectfully submits that Skaja cannot anticipate these claims. As such, Applicant requests reconsideration and withdrawal of this rejection.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 105, 113, 116, 131, and 132 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Skaja in view of U.S. Patent No. 6,266,897 to Seydel ("Seydel"). Applicant respectfully traverses this rejection.

Claims 105, 116, 131, and 132 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Skaja in view of U.S. Patent No. 5,625,963 to Miller ("Miller"). Applicant respectfully traverses this rejection.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a prima facie case of obviousness. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). Establishing a prima facie case of obviousness requires that all

elements of the invention be disclosed in the prior art. *In re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A 1970).

As discussed above in relation to the 35 U.S.C. § 102(b) rejection, Skaja does not or suggest all of the elements of Applicant's claims. Nor do Seydel and Miller cure this deficiency. As such, because the references, either alone or in combination, do not teach or suggest all of the claimed elements, a prima facie case of obviousness has not been established. Accordingly, Applicant respectfully requests reconsideration and withdrawal of these claim rejections.

In light of the foregoing amendments and remarks, reconsideration by the Examiner is respectfully requested. It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should stand allowable.

Respectfully submitted,

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Date: August 22, 2006
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